

**U.S. Department of Labor**

Labor-Management Services Administration  
Washington, D.C. 20216



Reply to the Attention of:

OPINION NO. 83-55A

Sec. 4(a), 3(3), 3(1), 3(5), 3(4), 3(11), 3(12), 3(6), 3(7), 3(8)

NOV 3 1983

Mr. George Kelt  
Assistant U.S. Attorney  
U.S. Department of Justice  
515 Rusk Avenue  
Houston, Texas 77002

Dear Mr. Kelt:

This is in reply to your request for an opinion regarding coverage of Pipe Fitters Local Union No. 211 Welfare Trust Fund (the Fund) under title I of the Employee Retirement Income Security Act of 1974 (ERISA).

We have examined filings made for the Fund with the Department of Labor (the Department) under title I of ERISA, identified by No. 74-6063911-501. The documents on file with the Department indicate that the Fund was established and/or maintained by Pipe Fitters Local Union No. 211 affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (United Association) and by employers contributing thereto, pursuant to collective bargaining agreements, for the benefit of members of the local employed by the employers as well as their families.

ERISA title I, section 4(a) specifies that ERISA title I applies to any employee benefit plan if it is established or maintained (1) by any employer engaged in commerce or in any industry or activity affecting commerce, or (2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce, or (3) by both, except for plans specifically exempt under section 4(b).

The term "employee benefit plan" is defined in ERISA title I, section 3(3) as "... an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan." The term "employee welfare benefit plan" is defined in ERISA title I, section 3(1) as "... any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 other than pensions on retirement or death, and insurance to provide such pensions)." The term "employee pension benefit plan" is defined in ERISA title I, section 3(2)(A) as "... any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program – (i) provides retirement income to

employees, or (ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.”

The elements of coverage under title I of ERISA are:

- (1) the plan must be established or maintained by an employer or employee organization, as those terms are defined, or by both;
- (2) jurisdiction under the commerce clause;
- (3) the plan provides benefits to participants and beneficiaries as defined;
- (4) the plan provides benefits specified in the definition of “employee welfare benefit plan” or “employee pension benefit plan”; and
- (5) the plan is not exempt under section 4(b).

The following is a discussion of each of these points with respect to the Fund.

#### 1. Establishment or Maintenance by Employer and/or Employee Organization.

The Fund was established and/or maintained jointly by employers and employee organizations through collective bargaining.

ERISA section 3(5) defines the term “employer” as “... any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.”

The employers of the participants in the Fund which contribute to the Fund as a result of collective bargaining with the union locals clearly meet this definition.

ERISA section 3(4) defines the term “employee organization” as “... any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees’ beneficiary association organized for the purpose in whole or in part, of establishing such a plan.”

Pipe Fitters Local Union No. 211 meets the definition of “employee organization” under ERISA. The local is a labor organization in which employees participate and a purpose for which they exist is dealing with employers on matters incidental to employment relationships, including matters affecting employee benefit plans. Section N of the bylaws of Pipe Fitters Local Union No. 211 provides, in part. “14. Pipe Fitters Local Union No. 211 will not enter into any collective bargaining agreement for the Building Trades Journeymen employees in the form of a seniority plan based on each Journeyman’s length of service as a Journeyman.”

The Preamble of the Constitution, By-Laws, Rules of Order and Jurisdiction of the United Association (as amended August 2-5, 1971) provides, “We therefore urge upon all journeymen and apprentices who have jurisdiction ... to join us in our efforts to secure through the power of

organization, ..., a steady demand and a fair compensation for our toil, ....” Section 153 states, “No Local Union shall make or sign any agreement which contains a non-sympathetic strike clause.” Section 213(a) and (b) provides:

(a) A member shall not work contrary to or in violation of the terms and conditions of any collective bargaining agreement entered into either by a Local Union or the United Association.

(b) No member may be employed in an industrial plant on any work, ..., that comes within the work jurisdiction of the United Association where the Local Union does not have a collective bargaining agreement with the industrial plant ....

Section 192 refers to strike and lockout benefits and section 193 provides that members of a local for less than 6 months shall not be eligible to vote on a strike application.

## 2. Commerce Clause.

With respect to the commerce clause, ERISA section 4(a) provides that ERISA title I applies to employee benefit plans established or maintained (1) by any employer engaged in commerce or in any industry or activity affecting commerce, or (2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce, or (3) by both, except for plans specifically exempt under section 4(b).

ERISA section 3(11) defines the term “commerce” as “... trade, traffic, commerce, transportation, or communication between any State and any place outside thereof.” The term “industry or activity affecting commerce” is defined in ERISA section 3(12) as “... any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and includes any activity or industry affecting commerce within the meaning of the Labor Management Relations Act, 1947, or the Railway Labor Act.”

The term “industry or activity affecting commerce” has been given a liberal interpretation by the courts. The Supreme Court has held that the jurisdiction of the National Labor Relations Board under the Labor Management Relations Act definition is as broad as the jurisdiction of Congress over interstate commerce. See NLRB v. Fainblatt, 306 U.S. 601, 607, and cases cited therein (1939). Therefore, court decisions under the Labor Management Relations Act are useful in determining the application of sections 3(11) and (12) of ERISA. In the case of NLRB v. Bank of America, 130 F. 2d 624 (9th Cir. 1942), cert. denied 318 U.S. 791 (1943), the court pointed out that such normal business activities as correspondence with other banks and business institutions, use of telegraph or telephone facilities involved the use of channels of interstate communications so that the bank was “engaged in interstate activities not describable otherwise than as commerce.”

Therefore, the employers and Pipe Fitters Local Union No. 211 are included within the commerce clause of title I of ERISA.

## 3. Provision of Benefits Specified in Law.

Under title I of ERISA, in order to be covered, a plan must provide benefits specified in the law’s definition of “employee welfare benefit plan” or “employee pension benefit plan”.

The ERISA section 3(1) definition of “employee welfare benefit plan” includes “... any plan, fund, or program ... established or ... maintained for the purpose of providing ..., through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits

in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death), and insurance to provide such pensions)." (The effect of section 3(1)(B) is to include within the definition those plans which provide holiday and severance benefits, and benefits which are similar.)

According to the annual reports (Form 5500) filed with the Department, the Fund provides benefits described in section 3(1) of title I of ERISA.

#### 4. Provision of Benefits to Participants or Beneficiaries.

ERISA title I covers only employee benefit plans, i.e., plans arising out of the employment context. Thus, in order to be covered, a plan must cover participants who are employees and/or former employees (including members of employee organizations) who are or may become eligible to receive benefits or whose beneficiaries may be eligible to receive benefits.

ERISA Section 3(6) defines the term "employee" as "... any individual employed by an employer."

ERISA section 3(7) defines the term "participant" as "... any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit."

ERISA section 3(8) defines a beneficiary as a person designated by a participant or by the terms of an employee benefit plan who is or may become entitled to a benefit thereunder.

The Fund provides benefits to employees (and their beneficiaries) of employers with which the Fund was collectively bargained and who are represented by Pipe Fitters Local Union No. 211. Thus, the Fund provides benefits to participants and beneficiaries as defined in ERISA.

#### 5. Not Exempt Under Section 4(b).

ERISA section 4(b) exempts certain employee benefit plans from coverage. The Fund does not fall under any of the section 4(b) exemptions.

#### Conclusion

Therefore, the Pipe Fitters Local Union No. 211 Welfare Trust Fund is covered by title I of ERISA.

Sincerely,

Morton Klevan  
Deputy Administrator  
Pension and Welfare Benefit Programs